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Via Electronic Mail and U.S. Mail

July 18, 2012

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**Re: Lower Willamette River, Portland Harbor Superfund Site, USEPA Docket No:
CERCLA-10-2001-0240**

Dear Chip, Kristine and Lori:

As several Lower Willamette Group representatives discussed with the three of you on Monday, July 16, 2012, the LWG strongly disagrees with and objects to EPA's directed revisions to the May 2, 2011 draft final Baseline Human Health Risk Assessment (BHHRA). EPA's determination that the LWG has failed to comply with the September 28, 2001 Administrative Settlement Agreement and Order on Consent (Consent Order), and the potential imposition of stipulated penalties, as set forth in EPA's letters of June 22 and June 29, 2012 to the LWG. For the reasons stated in this letter, the LWG requests that EPA retract the June 22 and 29, 2012 letters and associated directed revisions to the draft final BHHRA to avoid the need for the parties to resort to formal dispute resolution under the Consent Order.

On June 22, 2012, EPA provided a redlined version of the main text and certain attachments to the LWG's draft final BHHRA and directed the LWG to revise the BHHRA consistent with that redline and with additional directed comments on tables and figures to the BHHRA. EPA's cover letter states that "EPA has determined that the LWG failed to produce a

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BHHRA of acceptable quality, or otherwise failed to perform in accordance with the requirements of the Order by failing to fully correct all deficiencies and incorporate all information and comments supplied by EPA on prior versions of the BHHRA.”

In its letter dated June 29, 2012, EPA stated that stipulated penalties are accruing as of June 22 because the BHHRA was not of acceptable quality.

Between December 2009 and July 2010, EPA provided more than 200 comments on the October 2009 draft BHHRA. EPA’s July 16, 2010 cover letter transmitting these comments, as well as several hundred additional comments on the draft Remedial Investigation Report and draft Baseline Ecological Risk Assessment, stated that EPA was providing its “complete set of comments” on the draft RI and baseline risk assessments and had “attempted to provide clear direction on the specific revisions that are needed to resolve the comments.” EPA and the LWG thereafter engaged in several months of detailed technical negotiations to resolve EPA’s comments. The resolution of all of EPA’s comments was documented in tables generated by the LWG and acknowledged by EPA as follows:

- *LWG General Responses to EPA Directive Comments on the Baseline Human Health Risk Assessment*, September 15, 2010 (acknowledged by EPA letter dated September 22, 2010)
- *LWG General Responses to EPA Non-Directive Comments on the Baseline Human Health Risk Assessment*, November 18, 2010 (acknowledged by EPA letter dated December 8, 2010)
- *LWG Response to EPA’s General Comments on the RI, BHHRA and BERA*, January 12, 2011 (acknowledged by EPA letter dated February 25, 2011).

EPA’s letters acknowledging its acceptance of the written resolution of the comments are clear and unambiguous. The LWG relied on and complied with the written resolutions, as well as pertinent EPA national risk assessment guidance documents, in preparing the revised version of the BHHRA. EPA’s June 22, 2012 letter and the directed revisions to the BHHRA entirely disregard these agreements to resolve EPA’s comments on the BHHRA, which EPA had advised us were its “complete set of comments” necessary to finalize the BHHRA.

EPA’s change of mind, without any explanation, is unreasonable. EPA’s determination, without any prior communication to the LWG, that the LWG is not in compliance with the Consent Order because of EPA’s decision not to honor these agreements or because the LWG failed to address comments EPA never made, is even more unreasonable.

The LWG has been working with EPA at the Portland Harbor Site for over 11 years. Although there have been disagreements, the overall tone of the working relationship has been positive. Up until now, the LWG has never formally invoked dispute resolution, preferring to work diligently and creatively with EPA’s staff and management to ensure the process moves forward to the shared goal of implementing cleanups at the Site. Based on all of the work described above that had been done to resolve EPA’s comments on the 2009 version of the BHHRA, and EPA’s representations to the LWG over the last several months that its comments would be clarifying in nature, the LWG was very surprised by EPA’s June 22 letter.

The cleanup and monitoring process at this Site will likely occur over an extended period of time, certainly much longer than the 11 years already spent on the RI/FS. It is reasonable to

assume that new staff, managers and representatives will be assigned to the project for EPA, its partners, and the PRPs. The parties need to work well together to manage the inevitable disagreements that will arise on technical and legal issues. All parties involved in the cleanup process, including the members of the LWG, the dozens of additional parties that may participate in Consent Decree(s) negotiations, EPA, and EPA's partners need to have a reasonable assurance that every party will act in good faith and not renege on or disregard written resolutions of issues and disagreements.

EPA is likely aware that its assertion of noncompliance has generated several stories in the media. The LWG is serious about its responsibility to provide an RI/FS that is consistent with the National Contingency Plan, in compliance with the Consent Order, and will that support a cleanup at the Site that will protect public health and the environment. The fact that EPA's assertion of deficiencies and noncompliance is now a public issue is a significant concern to all of the members of the LWG.

The LWG respectfully requests that EPA retract, without condition, its June 22 and 29 letters and its directed revisions to the BHHRA. If we do not receive written confirmation by noon on Monday, July 23, 2012, that EPA has retracted these letters and the directed revisions, we will initiate formal dispute resolution on July 24, 2012. If EPA is willing to retract the letters and the directed revisions, we would be happy to discuss the process to finalize the BHHRA.

Sincerely,



The Lower Willamette Group

cc: Confederated Tribes and Bands of the Yakama Nation
Confederated Tribes of the Grand Ronde Community of Oregon
Confederated Tribes of Siletz Indians of Oregon
Confederated Tribes of the Umatilla Indian Reservation
Confederated Tribes of the Warm Springs Reservation of Oregon
Nez Perce Tribe
Oregon Department of Fish & Wildlife
United States Fish & Wildlife
Oregon Department of Environmental Quality
LWG Legal
LWG Repository